IN SUPREME COURT OF THE UNITED STATES

EDWARD JASTER, Sr.,
Plaintiff in Error,

vs.

F. M. CURRIE,
Defendant in Error.

OCTOBER TERM, 1895.
No. 613.

ERROR TO THE SUPREME COURT OF NEBRASKA.

STATEMENT.

The controversy in this case is over the validity, force and effect of a judgment rendered in the Court of Common Pleas of Trumbull county, Ohio, when sued on in the courts of Nebraska. The plaintiff affirming such validity and the defendant denying the same.

The judgment was rendered against the defendant in error as endorser on three several promissory notes of Two Hundred Dollars ($200) each, made by Amos Perkins and William Perkins to the defendant, F. M. Currie, on January 10, 1893. These notes were alike save date of maturity, and in this form:

"$200.00. Sargent, Nebraska, January 10, 1893.

"On the first day of January, 1894, for value received, I, we, or either of us, promise to pay to the order of F. M. Currie, Two Hundred Dollars ($200), at the office of Frank M. Currie, Sargent, Nebraska, with interest at ten per cent. per annum from date until paid.

"The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note and all defenses on the ground of an extension of the time of its payment that may be given by the holders to them or either of them.

"AMOS PERKINS.
"WILLIAM PERKINS."

[illegible] vs. [illegible].

[illegible] of the notes were endorsed as follows:

"Pay to the order of E. Lauter, Sr., F. M. Currie."

Suit was begun on these notes against the makers [illegible] residents in Custer county, Nebraska, in December, 1898. [illegible] August 5, 1899, a notice was served on the attorney for F. M. Currie that the deposition of the plaintiff would be taken [illegible], in Trumbull county, Ohio, on September 5, 1899, [illegible] accordance with the practice of Nebraska, Code Civil P[illegible] Statutes, Sec. 372.

The defendant on the advice of his counsel attended [illegible] person. The deposition was completed the same day. In [illegible] afternoon of that day the defendant went to the home of [illegible] father who lived near Latimer in Trumbull county, where [illegible] remained until 1:17 a. m. of the 8th day of September.

Suit was begun in the common pleas court of Tru[illegible] ball county on the same notes on the 7th day of Septemb[illegible] 1899, and personal service of summons made on the defend[illegible] that day. On the 6th day of October the defendant, by Gilb[illegible] & Chryst, his attorneys, appeared specially and filed a mot[illegible] to set aside the service. Afterwards leave was given to [illegible] affidavits and the motion finally overruled February 26, 19[illegible] A writ of error was taken from this decision to the circuit co[illegible] where the judgment was affirmed, and on May 9, 1900, in p[illegible] suance of the mandate from the circuit court a judgment [illegible] entered in favor of plaintiff for $961 and costs. This suit [illegible] commenced in Custer county, Nebraska, on that judgment, [illegible] September, 1900.

The proceedings in the common pleas and circuit cou[illegible] of Ohio are set out at length in plaintiff's amended petition.

The defendant in his amended answer admits that [illegible] Trumbull county court of common pleas is a court of record [illegible] general jurisdiction and that the record of the Ohio courts [illegible] set out is correct, but pleads that the judgment was obtai[illegible] by fraud; that the notice to take depositions in Ohio [illegible] served for the purpose of fraudulently enticing and inducing [illegible] defendant to go into the state of Ohio, that he might be s[illegible] there; that he did not know of such fraudulent purpose u[illegible] after he filed his special appearance in said cause and had [illegible] opportunity to present such defense in the Ohio courts.

As a defense to the notes he alleges that he was enga[illegible] in loaning, collecting and re-loaning money for the plain[illegible]

under a parol agreement by the terms whereof he should not become liable as an endorser on any notes taken in his own name; that having made a collection for plaintiff, in lieu of sending him the money he endorsed and sent the notes sued on to plaintiff with a letter informing him of the facts; that these notes were secured by chattel mortgage and were good; that when the first note matured he advised plaintiff to insist on payment or foreclose the mortgage securing the same, which plaintiff neglected to do and by reason of such neglect the mortgaged chattels had been disposed of and could not be reached; that the endorsement was without consideration.

To this amended answer a demurrer was filed, which having been overruled plaintiff elected to stand on his demurrer, and judgment was entered against him June 7, 1902.

The cause was then removed to the supreme court of Nebraska on error, where the judgment of the court below was affirmed and costs taxed to plaintiff. This writ of error is prosecuted to reverse those judgments.

It may be noted in passing that in the petition in error to the supreme court of Nebraska, plaintiff did not in express terms claim the protection of section one (1) of article four (4) of the constitution, nor did he in express terms claim that this judgment was protected under section 905, Revised Statutes, U. S., passed to carry into effect such provision of the constitution. We submit, however, that the ground of our contention clearly appears from the following excerpt from the opinion of the supreme court:

> "The contention of Jaster, based upon Christmas v. Russell, 5 Wall, 290, and other decisions of the Supreme Court of the United States, is that fraud in inducing the defendant to come within the jurisdiction of the Ohio court, where an unjust judgment was recovered against him, is not available in an action on that judgment in this state. This court is committed to a contrary doctrine."

Our contention then was and still is:

FIRST: So long as that judgment stood unimpeached in Ohio, it was unimpeachable in Nebraska.

SECOND: The answer disclosed no fraud on the part of the plaintiff.

THIRD: The answer disclosed no valid defense against either the notes or the judgment.

ARGUMENT

IS A FEDERAL QUESTION INVOLVED?

Whether one state has given full faith and credit to th judgment of another state is always a federal question and th Court has jurisdiction to review such judgment where th question appears from the record.

Huntington v. Attrill, 146 U. S., 657.

The Nebraska courts have held this Ohio judgment voi and refused to enforce it. The Ohio courts in Anderson Anderson, 3 Ohio, 109, held that fraud in procuring a judgmen in a sister state was no defense when that judgment was sue on in Ohio. Will it now surrender its convictions on that su ject because forsooth the Nebraska courts "are committed to contrary doctrine?" Will the fact that this judgment has bee denied full faith and credit in Nebraska prevent its enforcemen in that state should the defendant ever again set foot within i borders or acquire property within the reach of those courts?

Again, should the defendant remove from Nebraska some other state, or to each of the others successively, wh rule will the courts of those states apply to it? If each state which he may go is at liberty to choose its own course in th matter, it may be a good judgment in one-half the states in th Union and a bad judgment in as many more and judicial cha result.

We submit that upon reason and authority this Court ha jurisdiction and that its decision must be final, that this is on of the objects and purposes for which this Court was calle into being.

WAS THE OHIO JUDGMENT GIVEN FULL FAITH AND CREDIT?

It surely was not enforced. The Nebraska court assume the right to review the action of the Ohio court, its manner acquiring jurisdiction and the right to determine whether or no it should be enforced in Nebraska. It assumed to act as thoug under the constitution and statutes in pursuance thereof, eac state had the right to determine for itself what judgments would respect. We submit that so long as the judgment of

sister state cannot be impeached in the state where rendered is unimpeachable in every other state.

Christmas v. Russell, 5 Wall., 290.
Maxwell v. Stuart, 22 Wall., 77.
Anderson v. Anderson, 8 Ohio, 109.
McRae v. Mattoon, 20 Mass., 58.
Hanna v. Read, 102 Ills., 596.
Davis v. Hagler, 40 Kan., 187.
Engstrom v. Sherburne, 157 Mass., 153.

WAS JURISDICTION FRAUDULENTLY ACQUIRED?

The Nebraska court assumes without discussion that "fraud, trickery and deception" were practiced on the defendant to get him within the jurisdiction of the Ohio courts. The answer alleges fraud. Counsel for defendant insists that the demurrer to the answer admits it. We submit the demurrer admits only such facts as are well pleaded and the legitimate conclusions to be drawn therefrom.

The demurrer in this case admits the service of notice on defendant's counsel of the proposed taking of plaintiff's deposition at Vernon, in Trumbull county, Ohio, on September 8th, 1899; the taking of the deposition at the time and place stated in the notice and its completion the same day, and the institution of this suit and service of the summons on the defendant on the 7th day of September, two days after the taking of the deposition.

All the other acts were done by the defendant on his own initiative or on the advice of his own counsel without suggestion on the part of plaintiff. And the fraud alleged is not based on the institution of the suit in Ohio, but is based on the act of inducing him to go there that he might be sued; and the simple ordinary service of notice to take depositions is all the act laid at our doors. If this constitutes "FRAUD, TRICKERY AND DECEPTION," no judgment is safe when under review by the courts of another state.

It cannot be true that attending the taking of depositions in Ohio grants him eternal immunity from service in Ohio. A reasonable time to return is all he can ask.

Smythe v. Bank, 4 Dall., U. S., 329.
Chaffee v. Jones, 19 Pick. Mass., 260.

WAS THE JUDGMENT UNJUST?

The court without discussion assumes that the judgme was an "unjust judgment," but does consider whether or evidence could be received to vary or contradict the contra implied by law on the part of the endorser, and arrives at t conclusion that such evidence is competent—that question co ceded without an admission that it is right or legal—t question then presented, and the question of paramount i portance where a judgment is assailed, is: Do the facts set o disclose such a defense as renders the judgment unjust? W it such an unconscionable judgment as authorizes the interfe ence of a court of equity to set it aside? That must be deter ined from the facts set out in the amended answer, which a briefly these: The defendant while engaged in loaning mon for plaintiff, collecting and re-loaning same under a par agreement that he should not be liable as endorser on a "notes taken in his own name," having made a collection f plaintiff, in lieu of sending him the money so collected, endors and sent plaintiff the notes sued on, which were own by himself, with a letter explaining the transactio that those notes were secured by a chattel mo gage and were good; that when the first note matured advised plaintiff to insist on payment and if not paid to fo close; which plaintiff neglected to do, and by reason of su neglect the security was lost. It discloses a transaction whe the agent was both vendor and purchaser of his own notes behalf of his principal, the plaintiff. A transaction where h personal interest conflicted with his duty as agent for plainti Such transactions are universally condemned by the courts a held voidable as contrary to public policy.

Michand v. Girod, 4 How, 45 U. S., 503.
Davoue v. Fanning, 2 Johns C. H., 252.
Veeder v. McKinley & C., 61 Neb., 893.

Whether defendant would have been liable notwithstan ing the agreement, had it been broad enough to include th transaction, we need not stop to inquire, since the agreeme that he should not be liable as endorser "on notes taken in h own name" clearly does not contemplate that he shall not liable on notes of his own endorsed and sold to plaintiff.

We submit that it was neither inequitable nor unjust to require him to pay those notes, and that the facts set out disclose no defense.

It is respectfully submitted that the judgment of the supreme court of Nebraska and the judgment of the district court of Custer county, Nebraska, and each of them, be reversed and that this cause be remanded for further proceedings.

J. R. WEBSTER and O. A. ABBOTT,
Attorneys for Plaintiff in Error.